

HOUSE BILL 2133

By Calfee

AN ACT to amend Tennessee Code Annotated, Title 48,
relative to charitable organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 48, Chapter 101, Part 5, is amended by
adding the following new section:

(a) Each charitable organization and professional solicitor that is required to be
registered with the secretary of state shall:

(1) Disclose the following information at the time of solicitation about the
charitable organization on whose behalf the solicitation is being made:

- (A) The legal name of the charitable organization;
- (B) Each trade name that the charitable organization uses;
- (C) Each name the organization may be identified or known as;

and

(D) Each distinctive name the organization uses for purposes of
solicitation of contributions, as each name appears on file with the
secretary of state; and

(2) Upon request, disclose all of the following information at the time of
solicitation:

(A) The program or programs the funds solicited will be used to
support;

(B) The approximate percentage of contributions solicited in a
fiscal year to remain in this state; and

(C) The process to obtain for free a copy of the charitable organization's registration and financial information from the secretary of state.

(b)

(1) In addition to the information required by subsection (a), each written or printed solicitation must prominently state the following disclosure statement verbatim:

A copy of [insert name of the charitable organization as it appears on file with the secretary of state]'s registration with the secretary of state and financial information are available for free from the secretary of state. Registration is not an endorsement by this state.

(2) The disclosure statement must be displayed in a prominent location on the solicitation materials. If the solicitation occurs on a website, the disclosure statement must be prominently displayed on a webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.

SECTION 2. Tennessee Code Annotated, Section 48-101-504(a)(2), is amended by adding the following new subdivisions:

() The name and mailing address of each professional fundraising counsel utilized by the charitable organization;

() For charitable organizations that register for the first time, a statement of whether or not the charitable organization believes contributions for the first year of registration will exceed ten thousand dollars (\$10,000);

() The approximate percentage of contributions solicited in a fiscal year to remain in this state;

() For the initial registration of a newly formed charitable organization, a copy of a letter from the internal revenue service, or other evidence, showing that the organization is exempt from federal income taxation, or, for a charitable organization that has not applied for federal income tax exemption with the internal revenue service or is not required to apply for federal income tax exemption, evidence showing that the charitable organization is organized in a state or jurisdiction as a not-for-profit entity;

() An identification of the period of time or periods during which solicitations are to be conducted, which may be specific periods, estimated or projected time frames, or continuous, and which may involve different periods for different types of solicitations by the same charitable organization;

() An identification of the specific method or methods of solicitation utilized by the charitable organization and its agents;

() Whether the solicitation is to be conducted by professional solicitors, employees, or volunteers of the charitable organization, or others;

() If the solicitation is to be conducted in whole or in part by professional solicitors:

(i) The names and addresses of each professional solicitor involved in the solicitation;

(ii) The basis of payment or other consideration payable to each professional solicitor and the nature of the arrangements between the charitable organization and each professional solicitor;

(iii) The specific amount, formula, percentage of compensation, or property of any kind or value to be paid or provided to each professional solicitor; and

(iv) If payment is based on a percentage, then the amount of compensation as a percentage of the total contributions received, and the net amount of the total contributions received, expressed as total contributions received less expenses of solicitation other than amounts payable to a professional solicitor.

SECTION 3. Tennessee Code Annotated, Section 48-101-504(a), is amended by adding the following new subdivisions:

(3) In addition to the required information in subdivisions (a)(1) and (2), every charitable organization that has solicited contributions during the charitable organization's previous fiscal year shall provide the following information:

(A) The gross amount of the contributions, gifts, grants, and other similar amounts received by the charitable organization;

(B) The total program service expenses of the charitable organization;

(C) The total management and general expenses of the charitable organization;

(D) The total fundraising expenses of the charitable organization;

(E) The actual percentage of contributions solicited that remained in this state; and

(F) The aggregate amount paid, or payable, to professional solicitors and professional fundraising counsel.

SECTION 4. Tennessee Code Annotated, Section 48-101-506(c), is amended by inserting the following as a new subdivision (2) and redesignating the existing subdivision (c)(2) accordingly:

(2) The signature or signatures of a registration renewal statement under this subsection (c) constitute the affirmation of the signatory, under penalty of perjury, that the signature is that person's act and deed or the act and deed of the organization, and that the facts stated in the renewal statement are true.

SECTION 5. Tennessee Code Annotated, Section 48-101-504, is amended by adding the following new subsection:

(g) A charitable organization that is registered with the secretary of state to solicit contributions in this state has an affirmative duty to update, on a form prescribed by the secretary of state, the information submitted pursuant to subsection (a) as necessary prior to continuing to solicit funds in this state.

SECTION 6. Tennessee Code Annotated, Section 48-101-516, is amended by adding the following new subsection:

(c) A fraternal or membership organization not based in this state which solicits contributions from a person in this state by telephone, or contracts with professional solicitors to solicit contributions in this state, must have at least one (1) member or employee of the fraternal or membership organization residing within the county where the solicitation is made.

SECTION 7. Tennessee Code Annotated, Section 48-101-514, is amended by adding the following new subsections:

(e) In lieu of bringing an enforcement action in accordance with this section, the attorney general may accept a consent judgment with respect to an act or practice declared to be a violation of this part. The consent judgment must provide for the

discontinuance by the person entering the consent judgment of an act or practice declared to be a violation of this part, and it may include a stipulation for the payment by the person of reasonable expenses, attorney fees, investigation costs, and penalties incurred by the attorney general and secretary of state. The consent judgment may also include a stipulation for restitution to be made by the person to contributors of money, property, or other things received from contributors in connection with a violation of this part, and may also include a stipulation for specific performance. A consent judgment entered into pursuant to this subsection (e) must not be deemed to be an admission of a violation, unless it does so expressly by its terms. Before a consent judgment entered into pursuant to this subsection (e) is effective, it must be approved by the court and an entry made in the manner required for making an entry of judgment. After approval is received, a breach of the conditions of the consent judgment must be treated as a violation of a court order and is subject to all the penalties provided by law.

(f) When the attorney general has reason to believe that a person has engaged in, is engaging in, or is about to engage in a practice declared to be in violation of this part and the attorney general believes it is in the public interest to conduct an investigation to ascertain whether a person has in fact engaged in, is engaging in, or is about to engage in any such practice, then the attorney general may execute in writing and cause to be served upon a person who is believed to have information, documentary material, or physical evidence relevant to the alleged violation an investigative demand requiring the person to furnish, under oath or otherwise, a report in writing setting forth the nonprivileged relevant facts and circumstances of which the person has knowledge, or to appear and testify, or to produce relevant nonprivileged documentary material or physical evidence for examination at a reasonable time and

place as may be stated in the investigative demand, concerning the solicitation of charitable contributions.

(g) In addition to the powers of the secretary of state under subsection (d), to accomplish the objectives and to carry out the duties prescribed by this part, the attorney general may issue subpoenas or other process to a person and conduct hearings in aid of an investigation or inquiry, administer oaths, and take sworn statements under penalty of perjury, and serve and execute search warrants; except, that none of the powers conferred by this part may be used for the purpose of compelling a natural person to furnish testimony or evidence that might tend to incriminate the person or subject the person to a penalty. Information obtained pursuant to the powers conferred by this part shall not be made public or disclosed by the attorney general unless otherwise provided under this part.

SECTION 8. This act takes effect July 1, 2022, the public welfare requiring it.